

Applicant: Yoshiaki Togawa  
Serial No.: 10/077,616  
Group Art Unit: 2977

PATENT  
Docket No. 14402-0072

### REMARKS

Claims 1-6 are currently pending in the present application. In the Office Action dated August 14, 2003, the Examiner objected to claims 1, 3, 4, and 5 stating "It has been held the recitation that an element is "capable of" in claims 1, 3, 4, and 5 perform a function and is not a positive limitation but only requires the ability to so perform." The Applicants have amended claims 1, 3, 4 and 5 and respectfully submit that all the pending claims are presently in condition for allowance, and allowance of the application is respectively requested.

Claims 1-4 and 6 of the present application stand rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent No. 6,473,178, issued to Shimaoka (hereinafter Shimaoka). For a reference to anticipate a claim under 35 U.S.C. 102 the reference must teach every element of the claimed invention. (See, MPEP § 2131).

Claim 1 of the present application is directed to a particle size distribution measuring apparatus and includes a sample cell, a light source section irradiating two or more laser lights having a plurality of wavelengths to the sample cell, a detector configured to measure the intensity of a direct light passing through the sample cell and light scattered by particles within a sample located within the sample cell at respective scattering angles, and an arithmetic processing section configured to determine a particle size distribution by using the laser light at a first wavelength for a region of a particle size having low sensitivity, and a laser light at second wavelength in a range of a particle size to be measured by the detector.

Shimaoka is directed to a particle size analyzer based on laser diffraction method and recites an irradiation optical system for irradiating a laser beam to particles and having an output beam wavelength of about 300 to about 400nm as a light source, a measurement optical system situated near the irradiation optical system for measuring a space intensity distribution by receiving light deflected or scattered by particles of a laser beam from the irradiation optical system and including a plurality of light sensors disposed in an area of a predetermined front angle and in the irradiating direction of the laser beam, a converging lens for converging light defracted or scattered by a particle group to be measured, a ring detector disposed at a focal position of the converging lens, and an operation portion

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connected to the measurement optical system for obtaining a particle size distribution of the particles from results measured by the measurement optical system. The Shimaoka reference fails to teach or suggest a light source section irradiating two or more laser lights having a plurality of wavelengths to the sample cell. As a result Shimaoka fails to teach every element of the claimed invention as required by MPEP § 2131. In light of the foregoing, the Applicant respectfully submits that claim 1 of the present application is patentable over Shimaoka. Furthermore, for at least the same reasons, the Applicant respectfully submits that claims 2-4 and 6, which depend on claim 1, are also in condition for allowance.

Claim 5 of the present application stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimaoka. The Applicant respectfully submits that the rejection to dependent claim 5, which depends on claim 1, must fail for at least the same reasons as set forth in the transversal of claim 1 under 35 U.S.C. § 102 above. In short, Shimaoka fails to disclose or suggest the elements of independent claim 1 and, therefore, fails as a primary reference at the outset. Therefore, the Applicant respectfully submits that claim 5, which is dependent on claim 1, is in condition for allowance.

In view of the foregoing, the Applicant believes that the pending claims are in condition for allowance. Reconsideration and early allowance are respectfully and sincerely requested.

If it is felt for any reason that direct communication with the Applicant's attorney would serve to advance the prosecution of this case to finality, the Applicant is invited to call the undersigned attorney at the below listed telephone number.

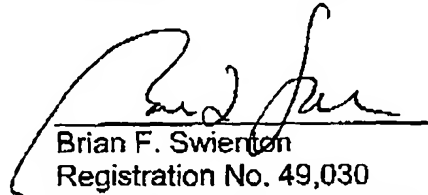
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The commissioner is hereby authorized to charge for any additional filing fees or credit any overpayment to deposit account number 50-1329. A duplicate copy of this sheet is attached.

Respectfully submitted,

Dated: 1-6-04

  
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